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D1W Dec-06

MOTI SHAI  
3524 VIA DEL PRADO  
CALABASAS CA 91302

**COPY MAILED**

**DEC 0 8 2006**

**OFFICE OF PETITIONS**

In re Application of : REMAILING OF  
Moti Shai : DECISION DISMISSING  
Application No. 10/774,080 : PETITION  
Filed: 9 February, 2004 :  
For: LASER BEAM TOY AND MOUSE :

This is a decision in reference to the paper filed on 7 August, 2006, which is treated as a renewed petition under 37 CFR 1.181 requesting that the holding of abandonment be withdrawn.<sup>1</sup>

The petition is again **DISMISSED**.

This application became abandoned on 22 September, 2004, for failure to submit a proper response to the Notice to File Missing Parts of Nonprovisional Application mailed on 21 July, 2004, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Petitioner was advised of the abandonment of the application in the Decision on Petition to Make Special Under 37 CFR 1.102(c)(1) mailed on 21 February, 2006. The petition to withdraw the holding of abandonment filed on 27 March, 2006, was dismissed on 19 June, 2006.

Petitioner requests that that the holding of abandonment should be withdrawn because petitioner believed that the mailroom supervisor had assured him that his response, although untimely, would be accepted.

<sup>1</sup> Petitioner Moti Shai called the Office of 7 December, 2006, and stated that the decision had not been received. A review of Office records reveals that the decision mailed on 30 October, 2006, was returned to the USPTO as undeliverable because it had been mailed to an incorrect address. Further, a review of Office PALM records indicates that the correspondence address listed on the oath or declaration filed on 14 January, 2005, was not properly entered in Office records. Office PALM records have been corrected, and the decision is remailed.

Petitioner's argument has been considered but is not persuasive. As stated in the previous decision, the application was properly held abandoned.

Additionally, petitioner is reminded that oral advice from Office employees may not be relied upon. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.<sup>2</sup>

Further, as MPEP 711.03(c) states, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

With regard to petitioner's assertion that he is unfamiliar with the laws and rules regarding practice before the USPTO, while this is unfortunate, it does not merit withdrawal of the holding of abandonment. Petitioner should consider obtaining the services of a registered patent attorney or agent.

As such, the showing of record is insufficient to withdraw the holding of abandonment.

**Petitioner is strongly encouraged to consider filing a petition to revive under 37 CFR 1.137(b).**

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision.

Further correspondence with respect to this matter should be addressed as follows:

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<sup>2</sup> See 37 CFR 1.2.

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Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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